

EXHIBIT “D-1”

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

3 * * * * *

4 SIDNEY MANES, Administrator of the Estate of HECTOR
5 RIVAS,

6 Plaintiff,

7 No. 19-CV-844 (BKS) (TWD)

8 - against -

9 ONONDAGA COUNTY, CITY OF SYRACUSE, WILLIAM
10 FITZPATRICK, DR. ERIK MITCHELL, AND "JOHN DOES 1-10",

11 Defendants.

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17 **EXAMINATION BEFORE TRIAL** of

18 **SIDNEY MANES**, Plaintiff, taken pursuant
19 to Notice, via videoconference by Zoom,
20 held in New York State on May 31, 2022,
21 and taken by LISA M. SCHUSTER, Court
22 Reporter and Notary Public, in and for
23 the State of New York.
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4
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24 LITIGRAPHICS, LLC.
25 Baldwinsville, New York
Mark Whalen, Videographer

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was prone to revise autopsy report.
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2. Asking counsel to ask witness to try to
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what Mr. Manes is referring to in terms
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S T I P U L A T I O N S

IT IS STIPULATED by and between the attorneys for the respective parties that the testimony contained herein may be used upon the trial of this action; that the filing of the testimony is waived; that all objections, except objections as to form, are reserved until the time of trial, and that objections as to form shall be noted on the record; that the examining party will furnish the examined party a copy of the transcript of testimony free of charge and that the testimony be taken before **Lisa M. Schuster**, a Shorthand Reporter and Notary Public in and for the State of New York, whose oath is waived.

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1 VIDEOGRAPHER: We are on the record.

2 Today is May 31st, 2022 and the time is
3 approximately 10:31 a.m. This is a remote
4 video deposition being conducted via on-line
5 conferencing. The zoom meeting number is
6 89564589907. My name is Mark Whalen, certified
7 deposition video specialist with Litigraphics,
8 LLC, 26 Sunset Terrace, Baldwinsville, New York
9 13027 and I am the videographer.

10 This is case number 19CV844 filed in US
11 District Court, Northern District of New York.
12 Caption: Sidney Manes, Administrator of the
13 Estate of Hector Rivas against Onondaga County,
14 William Fitzpatrick, Dr. Erik Mitchell and John
15 Does 1 through 10. The deponent is Sidney
16 Manes and this testimony has been noticed by
17 defendant. Would counsel and all present
18 please identify themselves for the record?

19 MR. KORENBAUM: Scott Korenbaum for Mr.
20 Manes.

21 MR. SONNEBORN: James Sonneborn from the
22 firm Bousquet Holstein. We are of counsel to
23 the estate for Mr. Manes.

24 MR. MANES: And I'm Sidney Manes being
25 deposed.

1 MR. MOSKOVITZ: Joshua Moskovitz, also for
2 the Plaintiff.

3 MR. JULIAN: Robert Julian for the
4 Defendants Mitchell and Fitzpatrick.

5 MR. VENTRONE: Mark Ventrone for the
6 Defendant County of Onondaga.

7 VIDEOGRAPHER: Thank you. Would the court
8 reporter please administer the oath or
9 affirmation at this time?

10 **S I D N E Y M A N E S**, Having been called as a witness
11 and being first duly sworn, testified as follows:

12 **EXAMINATION BY**

13 **MR. JULIAN:**

14 (It is agreed and stipulated by all
15 parties that the deposition will be conducted
16 via Zoom, that the witness will be sworn in
17 remotely and that the witness will read and
18 sign the transcript)

19 (Deposition Exhibits A through LL,
20 inclusive, premarked for Identification)

21 VIDEOGRAPHER: Please proceed.

22 Q. Good morning, Mr. Manes. How are you, sir?

23 A. Fine. Thank you, Mr. Julian.

24 Q. We haven't seen each other for quite a while.
25 You're looking well.

1 A. Thank you.

2 Q. So I'm going to ask you some questions. Just a
3 couple of thoughts about this. First, if I ask you a
4 question you don't understand, just tell me and I will
5 reframe the question. If you answer the question, I'm
6 going to assume you understood it. Second, you need to
7 answer with words even though we are videoing this, as
8 you know, the transcript controls, and so Uh-uh and that
9 type of nonverbal expression will require a verbal
10 response. And third, by all means any time you need to
11 take a break, please so express that, and the only thing
12 I would ask is that you -- if there's a question pending,
13 that you answer the question. Is that acceptable to you,
14 sir?

15 A. Yes.

16 Q. Okay. So let me begin with the obvious. And
17 could you identify yourself? What is your name and what
18 is your business address?

19 A. My name is Sidney Manes. I work for -- I work
20 with Bousquet Holstein, the law firm of Bousquet
21 Holstein, Pllc. I live in Syracuse.

22 Q. All right. And are you an attorney licensed to
23 practice law in the State of New York?

24 A. Yes.

25 Q. And what, Mr. Manes, is your role with regard

1 to the estate of Hector Rivas?

2 A. I was appointed as the administrator of the
3 estate by the Surrogate's Court in Onondaga County.

4 Q. All right. And are you presently serving in
5 that capacity?

6 A. Yes.

7 Q. Now prior to that, had you represented
8 Mr. Rivas?

9 A. Yes. As a pro -- as pro bo counsel, again in
10 documents, primarily.

11 Q. Okay. Well, is it your testimony that you did
12 not represent him?

13 MR. KORENBAUM: Object to the form of the
14 question. Mr. Manes can answer.

15 A. He had lawyers who represented him. I was
16 asked by Mr. Rivas to obtain documents for him that he
17 couldn't get for some reason, and I agreed that I would
18 do FOIL requests on his behalf.

19 Q. Okay. So let's go back to the beginning. When
20 did you first learn about Mr. Rivas?

21 A. I received a letter from him, I believe it was
22 in August of '92. If you have a document in that -- I'm
23 just not sure of the date.

24 Q. Sure. And let's be clear. I'm not going to
25 hold you to exact dates here. What I'd like to do is get

1 your recollection, however.

2 A. Correct.

3 Q. Is that fair?

4 A. Yeah, that's good.

5 Q. Okay. So sometime in the early 1990's, you
6 heard from by Mr. Rivas by letter, is that correct?

7 A. Correct.

8 Q. And is -- did you -- do you recall, I'm not
9 holding you to the exact contents of the letter, but do
10 you recall the sum and substance of the letter, what he
11 said to you in the letter?

12 A. He said he was having difficulty, to the best
13 of my knowledge, with obtaining documents, and he was
14 being bent to one and, the county said no, then went to
15 the police, they didn't have it, went to the DA, they
16 didn't have it. So he asked me as a lawyer to get him
17 FOIL requests.

18 Q. Did you -- and what was your response to that?

19 A. That I would. I read his letter and I felt
20 that I would help him.

21 (Whereupon, Rob Rickner entered the Zoom
22 videoconference)

23 Q. Okay. Did you create a file on him?

24 A. Yes, I created a file.

25 Q. All right. And at that time, again your best

1 recollection, I'm not going to hold you exactly, were you
2 practicing law with this present law firm, Bousquet
3 Holstein, or were you with another law firm?

4 A. No. I was with, was it Green and Seifter? It
5 was Green & Seifter at that time.

6 Q. All right. And did there come a time when that
7 firm merged with Bousquet?

8 A. Well, Mr. Green, yes, he sold his interest in
9 the firm. I don't know, I really wasn't party to any of
10 that.

11 Q. Okay. All right. So you created a file. And
12 as we go forward, fair to say you attempted to obtain
13 documents for him but you also appeared in court on his
14 behalf?

15 MR. KORENBAUM: Object to the form of the
16 question. Just from a temporal perspective,
17 but Mr. Manes can answer.

18 A. I did not -- my first appearance in court was
19 on the 440 motion when I sat in the back of the court and
20 listened.

21 Q. Okay. So -- and my question was perhaps
22 confusing. Did there come a time when you commenced
23 appearing in court as an attorney for Mr. Rivas?

24 A. My answer would be yes, when I didn't get a
25 response to my FOIL letters, and on those occasions I

1 sent them on to Mr. RIVAS who wrote me back and said he
2 didn't get everything that you asked for, and so I went
3 back to the law office or to whomever I had contacted,
4 and I was told that was it. And so then I went to
5 William Burke, who was the county court judge, and I
6 asked him for a court order to obtain FOIL documents that
7 I felt Mr. Rivas was entitled to.

8 Q. All right. And is that contained in a file?

9 A. I don't understand what you're said,
10 Mr. Julian.

11 Q. Well, I apologize. You said you obtained a
12 court order and had correspondence with Mr. Rivas, and
13 I'm asking you as you sit here today, do you know whether
14 that is in a file that you maintain with regard to
15 Mr. Rivas?

16 A. I'm not -- I'm not sure --

17 Q. All right.

18 A. -- whether I kept that as a separate file or
19 not, I just don't remember.

20 Q. All right. Before testifying here today, have
21 you reviewed any file that you have with regard to
22 Mr. Rivas?

23 A. Yes.

24 Q. What -- can you tell me in a general sense who
25 maintains that file?

1 A. Well, what documents are you referring to?

2 Q. I'm referring to the entirety of your file with
3 regard to Mr. Rivas.

4 A. Yes, I think I have those, all the files in
5 regard to I think the FOIL request. I'd have to -- I
6 don't know, Mr. Julian.

7 Q. Okay. Well, what can you tell me you reviewed
8 with regard to your file in preparation for your
9 testimony today?

10 A. Well, why don't you tell me which files in
11 particular you're talking about. There's -- I mean,
12 there's rather a large stack.

13 Q. Well, and respectfully, sir, that's what I'm
14 trying to determine, what files you maintained and what
15 was the general contents are of that large stack and what
16 you reviewed.

17 A. Well, I reviewed the first amended complaint
18 with all the Exhibits that were attached to it. I
19 exhibited -- I read my testimony in the proceeding in
20 federal court before Judge Peebles. I reviewed the
21 Interrogatories request that you had sent. I reviewed,
22 you know, I sent all the Exhibits. I guess that's what I
23 reviewed, primarily.

24 Q. All right. Have you turned your file over to
25 Plaintiff's counsel?

1 A. To my knowledge, most of the files have been
2 turned over to counsel.

3 Q. Well, the word -- you're a very experienced
4 lawyer. The word "most" engenders a follow-up question.
5 Have you turned all of your files over to Plaintiff's
6 counsel, and if not, what files have you not turned over?

7 A. That's impossible, Mr. Julian.

8 Q. Okay.

9 A. All of the files that were legal were turned
10 over to the counsel.

11 Q. And did that include your notes with regard to
12 your conversations with Mr. Rivas?

13 A. I don't understand your question.

14 Q. Sure. During the time that you represented
15 Mr. Rivas -- how many years did you represent him, sir,
16 let me ask you that?

17 A. I would say I represented him from the 440
18 through the federal proceedings, that must have been
19 eighteen, twenty years.

20 Q. Okay.

21 A. That's in a pro bono capacity. I was not
22 counsel. He had lawyers.

23 Q. Okay. Probably a good time for you to tell me
24 what you mean by that distinction. What does that mean?

25 A. When I -- say it again, Mr. Julian.

1 Q. Sure, sure, sure. And two things: If you have
2 trouble understanding me, not only because of the
3 technology but because of me, tell me. And second, I
4 don't ever mean to interrupt you or talk over you, so if
5 I'm doing that, tell me. Okay?

6 A. Okay.

7 Q. All right. So you have said several times you
8 were representing him, Mr. Rivas, in a pro bono capacity
9 and that he had other lawyers, and I'm just asking you to
10 explain that. You're an experienced and accomplished
11 lawyer. Tell me what that means to you.

12 A. My first really interaction with any of the
13 other lawyers was when an attorney by the name of
14 Schumann brought on the 440 Motion before Judge Brunetti.
15 I just sat in the back of the court room and listened to
16 the presentation and the hearing that took place in front
17 of Judge Brunetti.

18 Q. Okay.

19 A. I did not participate in it, other than I sat
20 there and listened.

21 Q. Do you remember if your appearance was noted?

22 A. I don't know that.

23 Q. All right. So before the 440 Motion, did you
24 have the opportunity to speak with Mr. Rivas and take a
25 history from him?

1 A. Not that I recall.

2 Q. Okay. Let me try to move this along, and if
3 this doesn't work, that's fine, I'm not suggesting it
4 should or it shouldn't. Did you ever sit down with
5 Mr. Rivas and take a history of what happened to him,
6 including, but not limited to, the events of his -- the
7 events of Friday, the 29th, Saturday, Sunday and Monday?

8 MR. KORENBAUM: That calls for a yes or no
9 answer.

10 A. I'm not -- you'll forgive me, I'm not sure I
11 understand what you're talking about.

12 Q. No, no, that's fine. Let me try it a different
13 way. Let's, if we could, go to Exhibit 1 - I'm sorry -
14 Exhibit A, and let's look at the first amended complaint.
15 That's a document that you indicated you've reviewed in
16 present for your testimony, correct?

17 A. Yes.

18 Q. And this complaint, the first amended
19 complaint, was brought by you as the administrator of the
20 estate of Mr. Rivas, correct?

21 A. Would you say that again, please.

22 Q. Sure. You were the administrator of the estate
23 of Mr. Rivas, and you brought this lawsuit on behalf of
24 the estate, correct?

25 A. Correct.

1 Q. And you -- did you provide information with
2 regard to the allegations in the complaint?

3 A. I would have to read to make -- I'd have to go
4 through it again. I remember discussing a lot of the
5 items with Mr. Rivas. I remember discussing a lot of the
6 items with Mr. Benno, his lawyer.

7 Q. Okay. Thank you. Now, in terms of your
8 discussion with Mr. Rivas, did you make notes? We
9 lawyers frequently of our vintage use yellow legal pads
10 and pens, now they use electronic things. Did you make
11 notes with regard to your discussion with --

12 A. Mr. Julian, I don't remember whether I did or
13 not.

14 Q. Okay.

15 A. It does not --

16 Q. Mr. Manes, you trailed off.

17 A. I don't remember doing that.

18 Q. If you made notes, did you turn those over to
19 the Plaintiff's counsel in this case?

20 MR. KORENBAUM: Object to the form of the
21 question. Mr. Manes can answer.

22 A. If I made notes, certainly I would have read
23 from those notes or sent copies to Mr. Benno.

24 Q. Okay. So let's just go back again. You
25 started representing him at or around -- Mr. Rivas at or

1 around the time of the 440 motion. What was your
2 representation of him after that, what did you do?

3 A. After the 440?

4 Q. Yes, sir.

5 A. I wrote a letter to Judge Brunetti, I think
6 that's part of the Exhibit, I think, about the pictures
7 that were taken not by Mr. Mitchell, Dr. Mitchell, but by
8 Mr. Collins. I finally obtained those on a FOIL request
9 from the county health department, and finally I was
10 given the two pictures or the pictures. And after the
11 440 motion, on Judge Brunetti's decision, I wrote to
12 Judge Brunetti a letter, and I think that is also part of
13 the Exhibits, I don't know where it is now, but I wrote a
14 letter to Judge Brunetti about the slides - the slides -
15 the pictures that the slides represented, and he had
16 already contacted the district attorney's office and were
17 told there are no slides, they were pictures that was
18 done by Mr. Maxwell and supported by Dr. Jumbelic. So he
19 had that and he conducted a hearing that I sort of
20 reviewed and felt that the pictures themselves was
21 grounds for a decision other than what he rendered, and
22 he wrote me back or called me on the phone, I can't
23 remember which, and he said, well, you got a gateway to
24 the habeas corpus, I'm not going to do anything further.
25 I said okay.

1 Q. So let me ask you some more sort of general
2 questions, if I may. When you embarked upon representing
3 Mr. Rivas at or around the time of the 440 motion, did
4 you have the opportunity to review the file of the trial
5 counsel, Mr. Calle?

6 A. You have to say that again, please.

7 Q. Sure. Can we agree that Mr. Calle was the
8 trial counsel?

9 A. Yes.

10 Q. Okay. And did you ever see his file?

11 A. No.

12 Q. Did you ever ask to see his file?

13 A. No.

14 Q. Did you ever have any discussions with any
15 lawyers who said they saw his file?

16 A. No.

17 Q. Do you know Richard Priest?

18 A. Yes.

19 Q. Did he represent Mr. Rivas at some point?

20 A. I was first -- I knew, at least I was informed,
21 that he took the appeal, I think, on a -- I'm not sure.
22 If you'll forgive me, I'm not sure.

23 Q. No, that's fine. And I'm not asking you for
24 the detail of his representation. Do you remember yes or
25 no or I can't remember if Mr. Priest at some point

1 represented Mr. Rivas?

2 A. I remember reading that someplace or being
3 told.

4 Q. Do you recall that there was an article about
5 you in Central New York News about you and this case in
6 which Mr. Priest said he had reviewed Mr. Calle's file?

7 A. No, don't recall that at all unless you -- no.

8 Q. Have you talked with anyone, either in your
9 capacity as an attorney for Mr. Rivas or in your capacity
10 as administrator of the estate, about the whereabouts of
11 Mr. Calle's file?

12 A. No.

13 Q. And I want to make sure we understand each
14 other. I'm not -- in the totality of your representation
15 of Mr. Rivas, have you ever asked either Mr. Rivas or any
16 of his lawyers where Mr. Calle's file is?

17 A. No.

18 Q. Why not?

19 A. I was asked to obtain documents for him under
20 FOIL request because he was not capable of getting those
21 documents himself. That was the extent. I did not
22 contact Mr. Calle, I did not see his file --

23 Q. Okay.

24 A. -- nor did I know anyone else that did. Now,
25 you say it was in the paper. I don't even recall seeing

1 that in the paper.

2 Q. So what I am asking you, I want to make sure we
3 understand. I'm not looking to get anything but your
4 completely accurate answer here. During all of the time
5 that you represented Mr. Rivas, are you saying the nature
6 of your representation was limited to obtaining FOIL
7 documents?

8 A. After -- no. There was more after the 440.

9 Q. Okay. What do you remember about that? What
10 did you do after the 440 in terms of the representation
11 of Mr. Rivas?

12 A. I was -- I talked to a lawyer in the law firm
13 whose name is Kim Zimmer, and she is a -- did a lot of
14 criminal work in federal court, to my knowledge. And
15 after I was suggested by Judge Brunetti to do a habeas
16 corpus, I was not a criminal lawyer, I went to Kim Zimmer
17 in the office and she explained what that was. And I
18 asked whether or not she would take on Mr. Rivas and
19 follow through with the habeas corpus because I had no
20 idea what the hell to do, and she said yes.

21 Q. Okay. At that point did you speak with Ms.
22 Zimmer about the status of Mr. Calle's file?

23 A. No.

24 Q. Okay. And so that we're clear, to your
25 recollection, you have never talked with any lawyer or

1 any other person about where Mr. Calle's file is?

2 A. No -- or yes. I guess the answer is yes, I
3 didn't speak to anyone.

4 Q. And it goes without saying; therefore, that you
5 have never seen anything that purports to be Mr. Calle's
6 file?

7 A. Yes. How do you answer that, yes or no?

8 Q. Okay.

9 A. I did not see Mr. Calle's file at any time that
10 I can recall in all of the years that I have been
11 involved with Mr. Rivas.

12 Q. Okay. And has any lawyer told you that they
13 have seen Mr. Calle's file?

14 A. Not to my knowledge.

15 Q. So Mr. Calle testified, didn't he, before Judge
16 Brunetti, or was it --

17 A. Yes.

18 Q. And did anyone ask him for his file at that
19 time?

20 A. Not that I remember.

21 Q. And when I talk about his file, we understand
22 that this would be all of the records, notes and
23 documents that he would have with regard to his
24 preparation for the trial and the trial of Mr. Rivas,
25 correct?

1 A. Correct.

2 MR. JULIAN: Okay.

3 MR. KORENBAUM: Mr. Julian, you're
4 referring to Mr. Calle's notes, files,
5 etcetera, correct?

6 MR. JULIAN: Yes. Did I say something
7 else?

8 MR. KORENBAUM: I just wanted to be clear.
9 Thank you.

10 MR. JULIAN: Yes. Thank you.

11 Q. So how many times would you say you personally
12 met with Mr. Rivas?

13 A. I would say twenty times.

14 Q. Okay. And do you remember writing things down
15 when you met with him?

16 A. Could you repeat that, please?

17 Q. Sure. Did you write anything down when you met
18 with him as to what he said to you and what you said to
19 him?

20 A. I don't remember doing that, Mr. Julian.

21 Q. Okay. Did you speak with Mr. Rivas about the
22 facts in this case?

23 A. I believe that was part of our discussion, but
24 I can only tell you from my recollection.

25 Q. Okay. Did you ask Mr. Rivas about the events

1 of Friday, March 27th, 1987?

2 A. That was discussed, Mr. Julian, I assume.

3 Q. Okay. Did you ask Mr. Rivas what his movements
4 were, where he was on the evening of that date?

5 A. I don't recall that.

6 Q. Did you ask Mr. Rivas during any of your
7 meetings if he had an explanation for where he was
8 between 11 o'clock p.m. that evening and 2:30 the
9 following morning?

10 A. I recall our discussing it, but I didn't make
11 any notes that I recall. He felt that he had, at least
12 this my remembrance, he had an alibi and he was
13 absolutely was not -- he had an alibi for the time.

14 Q. Do you know what it was?

15 A. He talked about Coleman's Restaurant, he talked
16 about the liquor store, just in general, you know.

17 Q. Did he say he was at the liquor store?

18 A. No, just that -- he was not at the liquor store
19 that was reflected in the trial.

20 Q. Okay. You're familiar with the testimony at
21 the trial that there was testimony that he was seen
22 parked in front of Ms. Hill's apartment at or around 11
23 p.m. on that date, the 27th. Did you ask him about that,
24 did you ask him if he was there in front of her
25 apartment?

1 A. I was not --

2 MR. KORENBAUM: Hold on. I'm going to
3 object to the form of the question, but
4 Mr. Manes can answer.

5 A. I was not a party to the trial in any, way,
6 shape or form.

7 Q. Okay.

8 A. And I didn't testify as to it that I recall.
9 My information about Mr. Rivas was that he had been, that
10 -- that he had an alibi, and that he discussed Saturday
11 night and how often he stopped, but I was not at the
12 trial, I did not hear his testimony.

13 Q. Well, you did read the trial transcript, didn't
14 you?

15 A. Oh, sure. Absolutely.

16 Q. Okay. So --

17 A. That I remember.

18 Q. And in the trial transcript, was there
19 testimony from witnesses saying they saw him in front of
20 Ms. Hill's apartment at 11 o'clock at night --

21 MR. KORENBAUM: Object to the form of the
22 question. Mr. Manes can answer.

23 Q. -- on March 27th?

24 A. Mr. Julian, I remember reading the testimony,
25 but if you're asking me to pinpoint whether I heard that

1 or not, I can't answer that.

2 Q. Would you be kind enough to assume that. Did
3 you ask Mr. Rivas was he sitting in front of her
4 apartment smoking a cigarette at or around 11 p.m. on
5 March 27th, 1987?

6 A. I never asked that question.

7 Q. Did you ask Mr. Rivas if he retained a key to
8 her apartment?

9 A. I never asked that question, though I remember
10 that he had the key and that in the search warrant, which
11 said when the murder occurred, they found the key in
12 Hector's apartment, that's what I remember.

13 Q. Okay. Did you ask -- I don't mean to speak
14 over you. I apologize. Please keep speaking.

15 A. All right.

16 Q. There's a little bit of a delay. So, again,
17 just tell me to shut up if I'm speaking over you. Okay?
18 I do not intent to interrupt you.

19 Did you ask him, Mr. Rivas, to describe to you
20 the nature of his relationship with Ms. Hill?

21 A. His relationship with whom?

22 Q. The -- Valerie Hill.

23 A. I don't recall asking him that question.

24 Q. Did you ask him if he was asked by her to cease
25 contact with him?

1 A. I don't remember asking that question.

2 Q. Did you ask him if he told one of his friends
3 that Valerie Hill was not well enough to come to a party
4 on March 29th?

5 A. I didn't ask him that question.

6 Q. Okay. Did you ask him if he ever said in the
7 company of another person, "Valerie, Valerie, I didn't
8 mean to do it"?

9 A. No.

10 Q. So did you ask him if he had erected a shrine
11 to her in his house?

12 A. I'm sorry. Would you repeat that?

13 Q. Absolutely.

14 MR. KORENBAUM: Mr. Julian, your voice is
15 trailing off a little bit.

16 MR. JULIAN: Okay. I apologize. I'll try
17 -- thank you. Just tell me --

18 MR. KORENBAUM: That's better.

19 MR. JULIAN: Good.

20 Q. Okay. Did you ask him if he had erected a
21 shrine of some type to Valerie Hill in his house?

22 A. I'm sorry. You'll have to forgive me. I
23 didn't understand your question.

24 Q. You're totally forgiven and let me try again.
25 Did you ask Mr. Rivas if he had a photo of Valerie Hill,

1 a photograph, in his house?

2 A. No.

3 Q. So have you told me all you remember about his
4 alibi for the Friday, March 27th, 1987?

5 MR. KORENBAUM: I'm going to object to the
6 form of the question.

7 Q. Do you remember anything else about it that you
8 haven't told us?

9 MR. KORENBAUM: Objection. Mr. Manes can
10 answer.

11 A. Mr. Julian, I am going to be 96 years of age
12 and this has been -- you know, we talked a lot, but what
13 you're asking me specific questions, I do not recall.

14 Q. All right.

15 A. We talked a lot.

16 Q. As you sit here, you understand that a factual
17 claim in the case is that Mr. Rivas could not account for
18 a period of time from approximately 11 o'clock on
19 March 27th, 1987 through 2 o'clock and that that is the
20 window in which the prosecution alleges the murder
21 occurred, you understand that?

22 A. Yes.

23 MR. KORENBAUM: I object to the form of
24 the question. Mr. Manes can answer.

25 A. Yes, I understand that.

1 Q. And so in your conversations with Mr. Rivas,
2 did you discuss with him what he was doing during that
3 time period?

4 A. Yes, it was discussed between me and Mr. Rivas.

5 Q. What did you --

6 A. He said it just wasn't true, absolutely was not
7 true, he did not kill Valerie Hill.

8 Q. Did he tell you what he was doing during that
9 time period?

10 A. The best that I remember, he was having
11 breakfast at Coleman's and/or Albert's in Cazenovia.
12 That was about the extent of it. I'm not -- it was
13 fabricated.

14 Q. In terms of the information that you gathered
15 for the preparation of the complaint, I'd just like to
16 ask you questions about certain individuals to see if
17 you've ever talked with them about this case. May I do
18 that?

19 A. Certainly. It's your right.

20 Q. Okay. Did you ever speak with William
21 Fitzpatrick about this case?

22 A. No.

23 Q. Did you ever speak with Erik Mitchell about
24 this case?

25 A. No.

1 Q. Did you ever speak with David A. Ragle about
2 this case?

3 A. Not that I remember.

4 Q. And I don't mean this the way it sounds. Do
5 you remember who Dr. Ragle is?

6 A. Yeah. Yes.

7 Q. He worked for the medical examiners office, you
8 remember that?

9 A. Yes.

10 Q. Okay.

11 A. Yes.

12 Q. Did you ever speak with a Dr. Sawyer about this
13 case?

14 A. I don't recall talking to Mr. Sawyer,
15 Dr. Sawyer.

16 Q. Did you ever speak with Mr. Calle about this
17 case?

18 A. No.

19 Q. Did you ever speak with any of the witnesses
20 who testified at the trial about this case?

21 MR. KORENBAUM: Objection to the form of
22 the question. Mr. Manes can answer.

23 A. What's the question, did I ever talk to
24 witnesses?

25 Q. Yes.

1 A. No.

2 Q. Did you ever speak with Rob Moran about this
3 cases, he's an assistant district attorney?

4 A. Yes.

5 Q. You did speak with him?

6 A. I was in the court room with Mr. Klein on a
7 number of occasions when we were before the court, and I
8 stood there with him and Hector was there and I talked to
9 Moran, said good morning or good afternoon, whatever it
10 was, but that's about the extent of it. He was
11 represented by Mr. Klein, and Mr. Klein asked him the
12 questions, not me.

13 Q. Okay. Did you ever speak with anyone from the
14 New York State Attorney General's Office about this case?

15 A. I talked to the attorney from the attorney
16 general's office who was handling the habeas corpus
17 proceeding. I answered her questions, I testified in
18 that case, but that was the extent of it. We didn't go
19 off in the corner and talk.

20 Q. Okay. Was that Patricia Stuart? I spoke over
21 you, I apologize.

22 A. Yes, Patricia Stuart.

23 Q. Thank you. Have you brought other lawsuits on
24 behalf -- civil lawsuits on behalf of Mr. Rivas or his
25 estate other than this lawsuit?

1 A. Yes.

2 Q. Tell me, please, what lawsuits you have
3 brought.

4 A. Just one in regard to his treatment at Upstate.

5 Q. Was that a medical malpractice case?

6 A. You'd have to tell me. I'm not sure whether it
7 was or whether it was negligence or malpractice, I just
8 am not sure.

9 Q. Okay. Was money collected?

10 A. Yes.

11 Q. Do you recall how much?

12 A. I believe it was \$25,000.

13 Q. All right. Did you bring any proceeding
14 against the state on behalf of Mr. Rivas in the court of
15 claims other than that case?

16 A. I don't understand your question.

17 Q. Sure. Do you remember a decision by a Judge
18 Sise, a court of claims judge?

19 A. I'm sorry, I don't remember that.

20 Q. Okay. Do you remember bringing in a proceeding
21 pursuant to Section 8 of court of claims act on behalf of
22 Mr. Rivas on the theory that he had a claim because he
23 was actually innocent?

24 A. Sorry, I don't recall that. That wasn't --

25 MR. KORENBAUM: Mr. Julian, we've been

1 going almost an hour. Why don't you get into a
2 good stopping point and then we'll take a short
3 break, if that's okay with you.

4 MR. JULIAN: Any point is a good stopping
5 point. I'm mindful of the situation and I'll
6 do whatever you need.

7 MR. KORENBAUM: Why don't you go for
8 another five minutes and then we'll see.

9 MR. JULIAN: Sure. Okay. All right,
10 Judge, you got it.

11 Q. So you just don't remember that case?

12 A. Well, it was handled by Michelle Rudderow. I
13 did not handle it, it was not handled by my office.

14 Q. Okay.

15 A. So I do remember talking with her, but that's,
16 you know, she handled this case.

17 Q. All right. Do you remember a court of claims
18 case that you participated in with perhaps Mr. Benno or
19 Benno or however you - and I don't say this
20 disrespectfully - I'm not sure how to pronounce his name,
21 do you remember that at all, sir?

22 A. No.

23 Q. Okay. Not a problem.

24 A. No, I don't, Mr. Julian.

25 Q. What I'd like to do now is start to review the

1 complaint, the first amended complaint, and this is a
2 document that was prepared at your request?

3 A. Yes.

4 Q. And did you provide information with regard to
5 the complaint?

6 A. Yes.

7 Q. And let's take a look at paragraph 29 of the
8 complaint, if we could, please. And please take a moment
9 to read it, take all the time you need, and tell me when
10 you're ready.

11 MR. KORENBAUM: You just want him to
12 review paragraph 29?

13 MR. JULIAN: At the moment, yes.

14 A. I've reviewed it.

15 Q. All right. And we're going to look at parts of
16 this complaint, so the pattern will be I'll ask you to
17 read it, and then you'll tell me when you're ready to
18 talk about it? Okay?

19 So this paragraph provides that the facts in
20 the case are either based on your personal knowledge or
21 upon information and belief, correct?

22 A. That's what it says.

23 Q. And information and belief, what does that mean
24 to you?

25 A. Well, it's what I remember and what we have

1 been able to surmise from the information that has been
2 provided over the course of time.

3 Q. All right. Does information and belief, as
4 it's used in a pleading of this type, mean that you don't
5 have actual knowledge but you are inferring it?

6 MR. KORENBAUM: Objection to the form of
7 the question. Mr. Manes can answer.

8 A. Yes.

9 MR. JULIAN: Okay. And do you want to
10 take a break now before we get into the
11 complaint?

12 MR. KORENBAUM: That's a good idea. Five
13 minutes?

14 MR. JULIAN: Five minutes. Whenever
15 you're ready.

16 VIDEOGRAPHER: We're off the record at
17 approximately 11:30 a.m.

18 (Whereupon, a recess was taken)

19 VIDEOGRAPHER: We're back on record at
20 approximately 11:44 a.m.

21 Q. So Mr. Manes, we were in the process of looking
22 at the complaint, and what I'd like to do is look at
23 certain paragraphs of the complaint and ask you the basis
24 -- the factual basis for the claims made. All right?

25 A. Yep.

1 Q. So if we could go to page 11 of the complaint
2 entitled, "reviving the cold case"?

3 A. I have it.

4 Q. You have it?

5 A. Yes.

6 Q. And I would like to go to paragraph 63. And
7 feel free when I say I'm going to a paragraph, if you
8 want to read anything above it, around it or anything
9 else, by all means tell me and you can do so. All right?

10 A. Yes.

11 Q. Paragraph 63 states, "Rivas' alibi was
12 uncorroborated and incomplete for a three and a half hour
13 window between approximately 9 p.m. on Friday,
14 March 27th, 1987 and 12:30 a.m. on Saturday, March 28th,
15 1987," is that your factual understanding?

16 A. No.

17 Q. What is your factual understanding with regard
18 to Rivas' alibi?

19 A. As I remember, he himself corroborated where he
20 was. He was at Albert's -- he was at Albert's and then
21 he went to Coleman's, and then he went back to Albert's
22 and he -- that's my best recollection.

23 Q. Did he give you the names of any people who
24 could corroborate where he was between 9 p.m. on Friday,
25 March 27th, 1987 and 12:30 a.m. on Saturday, March 28th?

1 A. I'm sorry. Would you just say the beginning
2 again?

3 Q. Sure. Did he give you the names of any people
4 who could corroborate where he was between 9 p.m. and
5 12:30 a.m. on March 27th, 1987 and March 28th, 1987?

6 A. Only the facts of where he went and where he
7 was on Friday evening.

8 Q. So apart from what Mr. Rivas told you, is
9 paragraph 63 correct that there was no corroboration of
10 what he told you?

11 MR. KORENBAUM: Objection to the form of
12 the question. Mr. Manes can answer.

13 A. I didn't investigate this. I hired counsel,
14 that's the best I can tell you. I don't know of any
15 corroboration, I have no idea.

16 Q. When you say you hired counsel, who did you
17 hire?

18 A. I hired Benno.

19 Q. Okay. But you read this complaint before it
20 was filed, correct?

21 A. I did, yeah.

22 Q. And did you suggest any changes, additions or
23 corrections to the complaint?

24 A. Not that I recall.

25 Q. Are you saying that paragraph 63 is inaccurate?

1 A. No.

2 Q. I'm sorry?

3 A. No, I don't think it's inaccurate.

4 Q. All right.

5 A. I don't know what it is. It's just a
6 statement.

7 Q. Okay. Paragraph 64, The prosecution -- "The
8 prosecution had no reasonable or probable cause to
9 believe that Rivas had anything to do with the murder and
10 sexual assault of Hill - and therefore, no case against
11 him for those crimes - unless it could prove that Hill
12 died on Friday night, March 27th, 1987," is that
13 paragraph accurate?

14 MR. KORENBAUM: Objection to the form of
15 the question, but Mr. Manes can answer it.

16 A. Yes.

17 Q. Is it factually correct?

18 A. Say it again.

19 Q. Is it factually correct?

20 MR. KORENBAUM: Object to the form of the
21 question. You're asking for his belief as to
22 whether that's correct or not?

23 MR. JULIAN: I'm -- he has -- this
24 complaint provides that he has knowledge,
25 unless there is the allegation of information

1 and belief, this is not on information and
2 belief.

3 MR. KORENBAUM: Object to the form of the
4 question, but Mr. Manes can answer.

5 A. I think it says what it says very clearly.

6 Q. So given this allegation, when you interviewed
7 Mr. Rivas, may I ask why you didn't ask him if he was
8 sitting out in front of her apartment at or around 11
9 p.m. on that evening?

10 MR. KORENBAUM: Object to the form of the
11 question, but Mr. Manes can answer it.

12 A. I didn't ask him.

13 Q. Why didn't you?

14 A. I believed Mr. Rivas when he told me that he
15 did not kill Valerie Hill.

16 Q. All right.

17 A. And that he had a perfect alibi for Saturday
18 night, which is when the medical examiner allegedly said
19 she died on Saturday night or Sunday morning.

20 Q. Okay. We'll get to that, but you also knew
21 that there were witnesses who saw -- who claim they saw
22 him at or around 11 o'clock at night in front of her
23 house, correct, on Friday night?

24 MR. KORENBAUM: Objection to the form of
25 the question, but Mr. Manes can answer it.

1 A. I don't know how he got those witnesses.

2 Q. Thank you. But my question, Mr. Manes, is
3 simply why didn't you ask Mr. Rivas about that?

4 A. I believed him. I believed he was innocent.

5 Q. Okay. Now paragraph 65, "Shortly after
6 becoming district attorney" -- I'm reading a quote.
7 "Shortly after becoming district attorney, Fitzpatrick
8 approached Mitchell, the medical examiner, and requested
9 that he revise Hill's autopsy report to expand the time
10 of death" -- I'm sorry. I need to begin again. I
11 apologize, a technical glitch.

12 "Shortly after becoming district attorney,
13 Fitzpatrick approached Mitchell, the medical examiner,
14 and requested that he revise Hill's autopsy report to
15 expand the time of death to include Friday, March 27th,
16 1987 when Rivas' alibi was not as strong." Do you see
17 that paragraph?

18 A. Yes, I remember the paragraph.

19 Q. And what is your basis for this paragraph?

20 A. Newspaper articles by Sawyer, by Ragle, by
21 Sullivan all reflecting his cooperation and his
22 commitment to the district attorney's office. I remember
23 reading in one of those statements that Mr. Mitchell
24 never met or it was in a newspaper article he never met a
25 criminal he couldn't convict on the evidence, it was in

1 one of the newspaper articles.

2 Q. So are you saying that there are newspaper
3 articles that say what is in paragraph 65, "That shortly
4 after becoming district attorney, Fitzpatrick approached
5 Mitchell, the medical examiner and requested he revise
6 Hill's autopsy report to expand the time of death to
7 include Friday, March 27th, 1987," are you saying that's
8 in a newspaper article?

9 A. I remember it was either a statement that
10 either Sullivan, Ragle or Sawyer made, and they did it by
11 an Affidavit, which I'm sure you have access to, where he
12 says very clearly that, at least as I remember, that
13 Mr. Mitchell was prone to do that, if necessary.

14 MR. JULIAN: Well first of all, I would
15 ask that this document be identified, not now,
16 but I make a demand for a copy of it. And
17 second, I'd like to reframe my question.

18 MR. KORENBAUM: Mr. Julian, just with
19 respect to your first statement, we'll take it
20 under advisement. I believe you have it, but
21 we'll check.

22 MR. JULIAN: Sure. Well, I have about
23 18,000 pages of documents and so do you. So if
24 you can just direct me to what he's
25 referencing, I would appreciate it, and I will

1 provide the same courtesy to you. Okay?

2 MR. KORENBAUM: Sure. We'll take it under
3 advisement.

4 Q. Okay. All right. So Mr. Manes, do you have
5 any information that William Fitzpatrick went to
6 Dr. Mitchell and said, I want you to change the Hill
7 autopsy report, do you have anything that supports that
8 specific conversation?

9 MR. KORENBAUM: Object to the form of the
10 question, but Mr. Manes can answer it.

11 A. I will repeat, I read the documentation of
12 Sawyer, Sullivan and Bengle - Ringle, excuse me - and it
13 was -- plus -- well, there's also the case history that
14 was recorded, it sets an outline of the case, and I read
15 it there, as well. So if you'll forgive me, Mr. Julian,
16 the documentation is all there. You show me the document
17 and I'll try to pick it out for you.

18 Q. So it's your testimony that you learned that
19 Fitzpatrick approached Mitchell and asked him to revise
20 specifically the Hill report from a document?

21 MR. KORENBAUM: Object to the form of the
22 question, but Mr. Manes can answer it.

23 A. Can you repeat that, please?

24 MR. JULIAN: I'm going to ask the court
25 reporter to read back.

1 THE WITNESS: Okay.

2 (The requested material was read)

3 MR. KORENBAUM: You noted my objection.

4 COURT REPORTER: I did.

5 A. Yes.

6 Q. And --

7 A. Yes.

8 Q. You answered yes. What document?

9 A. The Affidavits by Sawyer, Sullivan and Mengle,
10 they all gave Affidavits. And then there is also the
11 case history that -- I don't know how you describe -- I'm
12 trying to think how you describe it, but it's where the
13 court reporter reports everything in the case and it's
14 available for everyone to see, and it was a full
15 explanation on where all that information came from, and
16 that's where I read and it's where I thought I saw it.

17 Q. You were not present for any discussion between
18 Mitchell and Fitzpatrick, correct?

19 A. Not to my knowledge, no.

20 Q. Do you know of anyone else who was present for
21 this discussion that you can identify?

22 A. No.

23 Q. And you're not saying that either Sullivan or
24 Ragle or --

25 A. Sawyer.

1 Q. -- Sawyer were present for such a discussion
2 between Fitzpatrick and Mitchell, are you?

3 A. All I can tell you is they all gave Affidavits.

4 Q. Okay. And is it your recollection that their
5 Affidavits said that Fitzpatrick -- "Fitzpatrick
6 approached Mitchell, the medical examiner, and requested
7 he revise Hill's autopsy report to expand the time of
8 death," are you saying that that's in their Affidavits?

9 A. I don't recall that specifically. I do recall
10 that it being discussed that Fitzpatrick came and met
11 with Mitchell.

12 Q. Okay.

13 A. You're gonna -- that's the best I can do for
14 you, Mr. Julian.

15 Q. Well, if that was not said specifically in
16 their affidavits, what is your basis for this allegation
17 against the district attorney and the medical examiner?

18 A. If those affidavits don't do it, newspaper
19 articles did it, the case history that is recorded in the
20 reporter did it. But I read all of those things and
21 remember that they were able to quote and there were
22 quotes in the reports.

23 Q. They were able to quote a conversation between
24 Fitzpatrick and Mitchell, is that your testimony?

25 A. As I recall, they were able to do that, plus

1 the reporter that was recorded in our case books, that
2 was a full explanation.

3 Q. So --

4 A. And I think there were quotes in that.

5 Q. I apologize. You dropped off, sir.

6 A. All right. I'm sorry. There were quotes in
7 the reporter.

8 Q. And I say this with -- I'm not sure what you're
9 referring to in terms of the reporter and casebooks, I'm
10 just not sure what you're referring to.

11 MR. JULIAN: Could you -- at some point I
12 would ask counsel to ask the witness to try to
13 be more specific in terms of identifying it so
14 that we know what he's referring to.

15 A. Okay.

16 MR. KORENBAUM: We'll take it under
17 advisement.

18 Q. Paragraph 66, "At this time this request was
19 made, Mitchell was under criminal investigation by
20 Fitzpatrick's office, as well as by the department of
21 health and the department of environmental conservation
22 for varieties of misconduct, including improper disposal
23 of waste and stealing and mishandling of body parts," do
24 you see that?

25 A. Yep.

1 Q. Now, it starts with the words "at this time, at
2 the time this request was made," do you see that?

3 A. Yes.

4 Q. Can you tell me in terms of paragraph 65, at
5 what time this request was made, can you give me a date?

6 MR. KORENBAUM: Object to the form of the
7 question, but Mr. Manes can answer.

8 A. This came out of the hearing with the
9 department of health, to my knowledge, that was reflected
10 in the newspapers, as well as in other documents.
11 Mr. Fitzpatrick participated in that. The department of
12 environmental conservation had issued a number of
13 citations, that came out of the newspapers and other
14 documents.

15 The fact that the department of health was also
16 involved and was -- had been informed by members of the
17 medical examiner's group of what was going on in regard
18 to the medical examiner's office and the administration
19 of it, and to my knowledge, listening and hearing
20 conversation of there was a mentor who was appointed to
21 oversee the medical examiner.

22 Q. What I'm trying to --

23 A. All of that --

24 Q. I'm sorry. Please go on.

25 A. Well, that's it.

1 Q. What I'm trying to discern from you is the time
2 in which Fitzpatrick approached Mitchell to change his
3 report so that I can understand the claim in number 66.
4 Can you give me a time in which Fitzpatrick approached
5 Mitchell pursuant to paragraph 65 of the complaint, yes
6 or no?

7 A. I can't be specific with the time.

8 Q. Paragraph 67, "Fitzpatrick promised Mitchell
9 that if Mitchell revised and expanded Hill's time of
10 death to include Friday, March 27th, 1987, that
11 Fitzpatrick would make the investigations into Mitchell's
12 conduct go away." What is your basis for that?

13 A. Sidney Cominsky's statement in the newspapers.

14 Q. What did Sidney Cominsky say?

15 A. Or another source, don't remember where. I
16 read it in one of the documents or the newspapers or the
17 Affidavits, on Mr. Cominsky met, according to the
18 document, met with Fitzpatrick, that's my best
19 recollection and judgment.

20 Q. Well, are you saying that Mr. Cominsky met with
21 Fitzpatrick and they had a discussion about revising
22 Hill's time of death, and that if they did so, then the
23 investigation into Mitchell's conduct would go away, is
24 that what you're saying?

25 A. My best recollection is that was a discussion

1 between Sidney Cominsky and Fitzpatrick that appeared
2 either in the newspaper, which is where I think it did
3 appear, and it's reflected in the newspaper and it
4 certainly is reflected in the court reporter that was --
5 yeah.

6 Q. When you say the court reporter, can -- you're
7 welcome to -- do you want to take a break and talk to the
8 lawyers and see if we can just identify what you're
9 talking about?

10 MR. KORENBAUM: Sure. Why don't we do
11 that.

12 MR. JULIAN: Okay. Thank you.

13 VIDEOGRAPHER: This is the end of media
14 one. We're off the record at approximately
15 12:11 p.m.

16 (Whereupon, a recess was taken)

17 VIDEOGRAPHER: This marks the beginning of
18 media unit number two, the testimony of Sidney
19 Manes. We're back on record at approximately
20 12:19 p.m. Please proceed.

21 MR. KORENBAUM: Mr. Julian, we had an off
22 the record discussion where I offered to
23 elaborate on what Mr. Manes meant when he used
24 the term case reporter, correct?

25 MR. JULIAN: Yes.

1 MR. KORENBAUM: And it's okay for me to
2 inform you what he meant?

3 MR. JULIAN: Yes.

4 MR. KORENBAUM: He was referring to either
5 the second or third of the second circuit
6 decision addressing the grant of habeas corpus
7 relief or the request for, the petition and the
8 ultimate grant of the request. You can ask,
9 I'm representing he doesn't remember if it was
10 the second or third decision, but you can ask.
11 Mr. Manes would also like to supplement one of
12 his answers in response to questions that you
13 asked.

14 MR. JULIAN: Yes. If he could identify
15 generically what question it is he's
16 supplementing, that would be helpful, but
17 that's fine.

18 MR. KORENBAUM: Well, Mr. Manes, with
19 respect to the questions regarding the
20 expansion of the time of death, Mr. Julian
21 asked you to identify documents, and I
22 understand you want to supplement your answer.

23 THE WITNESS: Yes. One of the documents
24 was the Affidavit of the police who obtained a
25 warrant, and it spells out clearly that the

1 time of death was Saturday night or Sunday
2 morning, and that was the basis upon which they
3 obtained the warrant. It was very clear. So I
4 really, when I spent time talking with Hector,
5 we had that warrant and that helped me clearly
6 identify the time of death.

7 MR. JULIAN: Okay. Thank you.

8 MR. KORENBAUM: Thank you, Mr. Julian.

9 MR. JULIAN: Yes. How, just in terms of
10 the timetable, how, counsel, would you like to
11 organize this going forward? I'm mindful of
12 Mr. Mane's health and well-being and everyone
13 else's. Do we want to take a break? Do we
14 anticipate going all day? What is our
15 pleasure?

16 MR. KORENBAUM: I don't think we can go
17 all day, I don't think that's realistic to ask
18 of Mr. Manes.

19 MR. JULIAN: Well, I agree. And I'm not
20 -- please understand I'm asking -- this is not
21 adversarial from this perspective. I will do
22 whatever you want to do.

23 MR. KORENBAUM: So let's see the hour,
24 which brings us to about 12:44, and let's see
25 -- I was thinking somewhere between three and

1 four hours, but let's see how Mr. Manes is
2 doing. So why don't we go to about -- when I
3 say the hour, we started after our first break
4 at 11:44, we've had breaks otherwise, but when
5 you get to a good stopping point around quarter
6 to one, we'll reassess.

7 MR. JULIAN: You and your client our in
8 charge of that and you'll tell me. Okay?

9 MR. KORENBAUM: Thank you.

10 MR. JULIAN: You're welcome.

11 Q. Mr. Manes, we were looking at paragraph 67.
12 And do you have the name of any person or persons other
13 than Mitchell and Fitzpatrick who were present and heard
14 Fitzpatrick promise Mitchell that if Mitchell expanded
15 the time, Fitzpatrick would make the investigations into
16 Mitchell's conduct go away, do you have any person or
17 persons who were there and heard that?

18 MR. KORENBAUM: Object to the form of the
19 question, but Mr. Manes can answer. I believe
20 that was asked and answered, but he can answer.

21 A. I was not there, but I read in the newspaper
22 and in the court's decision that Sidney Cominsky was
23 Mitchell's lawyer and made the arrangements with
24 Fitzpatrick.

25 Q. Did you ever discuss this with Sidney Cominsky?

1 A. No.

2 Q. Do you know of any one who has?

3 A. No idea.

4 Q. So you believe that Sidney Cominsky was present
5 when Fitzpatrick promised Mitchell that if he had revised
6 and expanded Hill's time of death, that Fitzpatrick would
7 make the investigations go away?

8 A. Yes.

9 MR. KORENBAUM: Objection to the form of
10 the question, but Mr. Manes can and has
11 answered it.

12 A. Yes, and it did go away.

13 Q. Anyone else apart from Mr. Cominsky?

14 A. Not to my knowledge.

15 Q. All right. Paragraph 69. Before we get to
16 that, I'd like you, if you would, to look at Exhibit B
17 and Exhibit D, and when you're ready to discuss them,
18 just let me know.

19 MR. KORENBAUM: Mr. Julian, can you just
20 describe Exhibit D, how many pages it is?

21 MR. JULIAN: Of course. Of course, yes.
22 So Exhibit B, as I understand it, is page 8885,
23 Plaintiff's 8885 to page 8888.

24 MR. KORENBAUM: Okay. Thank you.

25 MR. JULIAN: And Exhibit D, we might as

1 well do both, is Plaintiff's 8910. Tell me
2 when you're ready, please.

3 THE WITNESS: B is the warrant, yep.

4 MR. JULIAN: So we can hear you. And if
5 you want to be off the record, that's fine.

6 THE WITNESS: Oh, no. And the other one
7 is --

8 MR. KORENBAUM: We're going to go off the
9 record for just a few minutes.

10 MR. JULIAN: Yeah, that's fine.

11 (Discussion off the record)

12 Q. Mr. Manes, you've now looked at Exhibit B and
13 Exhibit D, correct?

14 A. Yes.

15 Q. Now, do you have an understanding as to what
16 Exhibit B is?

17 MR. KORENBAUM: B or D?

18 MR. JULIAN: I'm sorry. B, as in boy.

19 MR. KORENBAUM: B.

20 A. Yes.

21 Q. What is it?

22 A. It's an application for a search warrant.

23 Q. Fine. And is this -- did you reference this
24 previously in your testimony as a basis for your belief
25 that Ms. Hill died on either Saturday or Sunday?

1 A. I'm sorry. Start that again, please, Mr.
2 Julian.

3 Q. No problem. No problem. Did you in your
4 earlier testimony reference this Exhibit as a basis for
5 your belief that Ms. Hill died on either Saturday or
6 Sunday?

7 A. Yes.

8 Q. And is this Exhibit a basis for your belief
9 that Dr. Mitchell changed his estimation as to the time
10 of death?

11 MR. KORENBAUM: Objection to the form of
12 the question, but Mr. Manes can answer.

13 A. Yes.

14 Q. And specifically does page P8888, the last page
15 say, "That the Onondaga County Medical Examiners Office,
16 Dr. Mitchell's preliminary estimate on the time of death
17 of the victim, Valerie Hill, was sometime Saturday, the
18 28th of March afternoon, and Sunday morning, the 29th of
19 March 198," and the year is obscured, do you see that?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. And this is an Affidavit signed by Timothy H.
24 Phinney, P-h-i-n-n-e-y, is that correct?

25 A. Yes.

1 Q. This is not an Affidavit that was signed by
2 Dr. Mitchell, agreed?

3 A. Yes, this is not signed by Dr. Mitchell.

4 Q. And do you have any knowledge as to whether or
5 not this Affidavit was shown to Dr. Mitchell before it
6 was utilized to be presented to a county court judge?

7 A. No.

8 Q. I would like now to refer you to Exhibit D, as
9 in dog, page 8910. This is a page from the medical
10 examiner's autopsy report, correct?

11 A. Correct.

12 Q. And I'd like to direct you to the top of the
13 page where it says, exam slash date. Does it state
14 3/30/87?

15 A. Yes.

16 Q. And then below under, in the left-hand corner,
17 narrative medical history, is a typewritten, "Decedent
18 was found prone in her residence by father and brother.
19 Found prone with a piece of blue material around the
20 neck. Last seen Friday by the father. Appears as though
21 decedent was there approximately two to three days," do
22 you see that?

23 A. Yep.

24 Q. And do you have an understanding as to who
25 dictated or typed that?

1 A. I see where somebody with the name of EKM
2 prosect, that's got to be Erik K. Mitchell, and he was
3 assisted -- it was assisted by NSB slash TJ.

4 Q. Okay.

5 A. So I'm assuming that this was a document that
6 was performed or utilized or made by Erik Mitchell.

7 Q. So if Erik Mitchell wrote or caused it to be
8 written the words "appear as though decedent was there
9 two to three days," that is inconsistent with what
10 Mr. Phinney said, correct?

11 A. No, I don't think so.

12 Q. And if Dr. Mitchell said, decedent -- "appears
13 as though decedent was there approximately two to
14 three days," the third day would be Friday, correct?

15 A. No.

16 Q. No?

17 A. Three days would be, I believe, Monday, Sunday
18 and Saturday.

19 Q. Okay. If she was found on Monday, 24 hours to
20 Sunday, 24 hours to Saturday, 24 hours to Friday, isn't
21 that three days?

22 A. It doesn't say that.

23 Q. It says approximately two to three days,
24 correct?

25 A. That's correct.

1 Q. And so if Dr. Mitchell were to testify that the
2 two to three days constituted her being present as
3 deceased from Friday to Saturday, Saturday to Sunday, and
4 Sunday to Monday, would you accept that?

5 A. No.

6 Q. Why not?

7 A. Because I think he makes it clear on that his
8 autopsy was based upon full rigor, and full rigor starts
9 to dissipate after 24 to 36 hours or 42 hours, I don't
10 believe that was the case. He made it clear that the far
11 exception was Friday night to make sure that he included
12 time when Rivas was not available or that he didn't have
13 an alibi.

14 Q. I'm sorry. I didn't mean to speak over you.
15 He was including Friday night in this report.

16 A. In what report?

17 Q. The Exhibit D.

18 A. I don't believe -- well, that's your
19 interpretation, Mr. Julian. I don't believe that's what
20 he -- I don't think it's --

21 Q. If she died on Friday --

22 A. If she what?

23 Q. If she died Friday night, let's say at
24 11 o'clock. 11 o'clock Friday to 11 o'clock Saturday
25 night, one day; 11 o'clock Saturday night to 11 o'clock

1 Sunday night, two days; 11 o'clock Sunday night to
2 11 o'clock Monday night, three days, fair?

3 A. Let's do it my way. The first day was Monday,
4 the second day was Saturday, the third day was Saturday.

5 Q. Well, isn't the question of time of death and
6 the approximate time of death the appropriate time to
7 start counting the days?

8 A. He made it very clear that she was in full
9 vigor -- full rigor.

10 Q. I understand you have pathological differences
11 in terms of his interpretation, but isn't your case based
12 on the fact that you think he changed his opinion with
13 regard to the number of days she could have been dead?

14 MR. KORENBAUM: Can you repeat your
15 question, which I'm going to object to?

16 A. I'm sorry. I beg your pardon, Mr. Julian.

17 Q. No, no. That's okay. Well, aren't you
18 claiming that Mitchell changed his opinion as to the
19 period of time that she was dead?

20 MR. KORENBAUM: Object to the form of the
21 question. Mr. Manes can answer it.

22 A. Yes.

23 Q. And doesn't this record indicate that he
24 believed she had been dead for two to three days from
25 Friday evening?

1 MR. KORENBAUM: Objection to the form of
2 the question. Asked and answered repeatedly.

3 A. You're missing out on Cyril Wecht,
4 pathologist --

5 Q. Okay.

6 A. -- to couple with what he said.

7 Q. Yes. Cryil Wecht is a pathologist, and he and
8 Dr. Mitchell disagree in terms of their opinions,
9 correct?

10 A. It's not a matter of disagreement. It's a
11 matter of pathologists.

12 Q. I see. So if she was deceased as of Friday
13 evening as referenced in this Exhibit D, then
14 Dr. Mitchell would not have to change his opinion as to
15 the duration of her time of death to time of discovery,
16 correct?

17 MR. KORENBAUM: Objection to the form of
18 the question.

19 THE WITNESS: I can answer it?

20 MR. KORENBAUM: Yes.

21 A. I hear you, Mr. Julian, but I take into account
22 Erik Mitchell's findings based his decision or Mitchell
23 did on a couple of things, not just what you're saying.
24 There was also the rigor, full rigor. There was also the
25 decomposition of the pictures of the brain, which were

1 impossible, that is very clear. You can only stretch
2 this so far, and you'll forgive me, but I disagree with
3 you and so did the courts.

4 MR. KORENBAUM: Mr. Julian, finish up this
5 line of questioning and let's take that break.

6 MR. JULIAN: You had your hand over your
7 mouth. I couldn't hear you.

8 MR. KORENBAUM: I'm sorry. Why don't you
9 finish up your line of questioning and let's
10 take that break we discussed earlier.

11 MR. JULIAN: Let's take that break.

12 MR. KORENBAUM: Okay.

13 VIDEOGRAPHER: We're off record at
14 approximately 12:47 p.m.

15 (Whereupon, a recess was taken)

16 VIDEOGRAPHER: We're back on the record at
17 approximately 1:52 p.m. Please proceed.

18 MR. KORENBAUM: This is Scott Korenbaum.
19 Mr. Julian and I had a brief discussion just
20 moments before. We're going to go for an
21 additional hour today, that's about all that
22 Mr. Manes -- that's good for Mr. Manes. It's
23 getting late in the day. Also, we reserve the
24 right for Mr. Manes or Mr. Manes reserves the
25 right to review the transcript of his

1 deposition testimony.

2 MR. SONNEBORN: We agreed it's going to be
3 read and sign.

4 MR. KORENBAUM: Right.

5 MR. JULIAN: I didn't -- I think I know
6 what you said, but I didn't pick it up. What
7 did you just say?

8 MR. KORENBAUM: Just that he reserves the
9 right to review his testimony and make any
10 changes if he wanted to due to Rule 30.

11 MR. JULIAN: Yep. All right.

12 Q. Mr. Manes, good afternoon.

13 A. Good afternoon, Mr. Julian.

14 Q. I'd like to ask you to go back to paragraph 65,
15 please, of the Exhibit A, the complaint, and once you've
16 reread that, let me know.

17 A. I've read it.

18 Q. All right. Did this conversation, to your
19 knowledge, occur before the presentation to the grand
20 juror or after?

21 A. I think before.

22 Q. Okay. And what's your basis for that?

23 A. My basis for -- I read his testimony,
24 Mitchell's testimony at the grand jury, and he said
25 specifically that he had changed on put the time of death

1 farther out because of his notes and because of slides.

2 Q. Okay. I sent this morning, and we have it in
3 various places, Exhibit KK, which is Mitchell's grand
4 jury testimony.

5 MR. JULIAN: Could you put it up, because
6 they may not have it on paper?

7 A. KK?

8 Q. KK. Do you have it? Okay.

9 A. I got it.

10 Q. Where - can you direct me to where it says that
11 he based his - Mitchell based his testimony on slides?

12 A. I don't see it in this testimony.

13 Q. Okay.

14 A. But it is in the testimony of the trial.

15 Q. All right.

16 A. That's where I think it was.

17 Q. Well, what I'm asking you, though, is was this
18 discussion -- I asked you if this discussion in terms of
19 extending out the time of the death to Friday, as you
20 claim in paragraph 65, if that occurred before the grand
21 jury testimony, did it?

22 A. That was my best recollection, but it might not
23 have been. You got to show me the testimony of the
24 trial.

25 Q. Well, first I want to -- I want -- I need to

1 know what is the basis of your recollection that the
2 discussion to extend out the time of death between
3 Fitzpatrick and Mitchell occurred before the grand jury?

4 MR. KORENBAUM: Objection to the form of
5 the question. Mr. Manes can answer.

6 A. My only recollection is that he said it and
7 that it was part of the testimony. I assumed, maybe
8 wrongly, that it was in the -- but it was at the grand
9 jury, but it may -- I read it, there's no question, in
10 the testimony that he made, I think that was probably at
11 the trial.

12 Q. So his testimony at the grand jury was not;
13 therefore, based upon Fitzpatrick approaching Mitchell
14 and offering him a deal?

15 A. I don't know that.

16 Q. Okay. So you don't know one way or the other?

17 MR. KORENBAUM: Objection to the form of
18 the question.

19 A. Yeah. Okay.

20 Q. Then do you have, looking at paragraph 66, are
21 you alleging that Mitchell was under investigation by the
22 department of health and the department of environmental
23 conservation, as well as Fitzpatrick, at the time of his
24 grand jury testimony?

25 A. I don't know.

1 Q. Mitchell -- excuse me just one second.

2 MR. KORENBAYM: List to the question.

3 THE WITNESS: What question?

4 MR. KORENBAUM: Listen to the questions
5 that are being asked of you.

6 Q. You state that, going now to number 75 --
7 strike that.

8 Paragraph 73, will you look at it, please?
9 Tell me when you're ready.

10 A. Yep.

11 Q. This paragraph states, "At Fitzpatrick's
12 direction, Mitchell perpetuated the lie Hill's time of
13 death included Friday, March 27th, 1987, and falsely
14 testified to that in the grand jury in or about November
15 of 1992," do you see that?

16 A. Yep.

17 Q. What is your basis for saying that Fitzpatrick
18 directed Mitchell to testify falsely in November of 1992?

19 MR. KORENBAUM: Object to the form of the
20 question. You can answer.

21 THE WITNESS: Oh, I can answer it?

22 MR. KORENBAUM: Yes.

23 A. I certainly remember reading someplace in one
24 of the testimony that was given by Mitchell that he said
25 under oath, I believe now it was the jury trial, that he

1 was able to extent the time based upon his notes and
2 slides.

3 Q. Okay. But this is a complaint that was
4 prepared at your direction as the administrator of the
5 estate, correct?

6 A. Correct.

7 Q. And you, as the administrator of the estate,
8 said that you were alleging making allegations based on
9 fact except where it was upon information and belief,
10 correct?

11 A. I said that somewhere?

12 Q. Well, didn't we go over it, isn't it in
13 paragraph 29?

14 A. Yeah. That was a long way back.

15 Q. Say that again. Paragraph 29, isn't that what
16 paragraph 29 of the complaint says?

17 MR. KORENBAUM: Objection to the form of
18 the question. You can answer it.

19 Q. Well, does paragraph 29 say that the facts
20 stated in this complaint are based on the personal
21 knowledge of you, the Plaintiff?

22 A. And upon information and belief.

23 Q. Yes. But the paragraph we're looking at,
24 paragraph 73, does not say upon information and belief,
25 does it?

1 A. Well, that one doesn't, but the factual
2 background does.

3 Q. Could you explain? I apologize. Could you
4 explain what you mean by the factual background does?

5 A. That's what's stated -- the facts that are
6 stated in this complaint are based on the personal
7 knowledge of the Plaintiff and upon information and
8 belief.

9 Q. Well, there are specific paragraphs where upon
10 information and belief is alleged, such as paragraph 77,
11 correct?

12 MR. KORENBAUM: Objection to the form of
13 the question. Mr. Manes can answer.

14 A. 77?

15 Q. Paragraph 77, yes, sir.

16 A. Yeah. Well, that was my belief until I found
17 out otherwise.

18 Q. But my point is some paragraphs say upon
19 information and belief.

20 MR. KORENBAUM: Mr. Julian, question,
21 don't editorialize, please.

22 MR. JULIAN: Well, I think I'm allowed to
23 ask the question before you interrupt.

24 Q. Upon information and belief is a term of art,
25 correct?

1 A. Yes.

2 Q. And that term of art reflects uncertainty as to
3 the facts, correct?

4 A. I'm sorry. Rephrase that. Will you say it
5 again, please?

6 Q. No. Rather, let me do it this way. You define
7 upon information and belief as you understand it.

8 A. On information I've read or I've obtained or
9 I've seen, that's information. And it's my belief that
10 these were statements that were made by Dr. Mitchell. If
11 they weren't made at the grand jury, they were made
12 certainly in his testimony in the trial.

13 Q. But in paragraph 73, you state not on
14 information and belief, but as a -- the complaint states
15 as a flat out fact that: "At Fitzpatrick's direction,
16 Mitchell perpetuated the lie Hill's time of death
17 included Friday, March 27th, 1987 and that he falsely
18 testified to that in the grand jury in or about November
19 of 1992." How did you know that?

20 MR. KORENBAUM: Objection to the form of
21 the question.

22 A. Well, when you read -- I guess section 72 gave
23 me some authority to presume that that's what happened.

24 Q. You said paragraph 72?

25 A. Yes.

1 Q. So paragraph 72 is your basis for what you said
2 in the complaint in paragraph 73?

3 A. Yes.

4 MR. KORENBAUM: Objection to the form of
5 the question. Mr. Manes can answer.

6 A. It says, "According to the plan, once Mitchell
7 provided Fitzpatrick with the revised time of death,
8 Fitzpatrick took affirmative steps to have Rivas arrested
9 and formally charged with Hill's murder and assault." So
10 I can only assume that that took place at the grand jury,
11 but it wasn't, I don't think, unless I don't have all the
12 minutes.

13 Q. So what I'm trying to understand, and let me
14 ask it this way, you are alleging that Mitchell and
15 Fitzpatrick had a conversation in which they cut a deal,
16 correct?

17 A. Correct.

18 Q. When did that happen?

19 MR. KORENBAUM: Objection to the form of
20 the question. Mr. Manes can answer.

21 A. I don't know the exact date, but I do know it
22 happened.

23 Q. The exact date escapes you because --

24 MR. KORENBAUM: Objection to the form of
25 the question.

1 Q. Why don't you know the exact date?

2 A. Why don't I know?

3 MR. KORENBAUM: Sidney, wait for me to
4 object.

5 THE WITNESS: Oh, I did.

6 MR. KORENBAUM: Objection to the form of
7 the question.

8 THE WITNESS: I did.

9 MR. KORENBAUM: You can answer it now.

10 Q. Would you like me to ask the question again?

11 A. Ask your question again.

12 Q. Sure. You got it. Can you explain why you are
13 unaware of the exact date given the specificity of the
14 allegation?

15 MR. KORENBAUM: Objection to the form of
16 the question.

17 A. I was not present when the statement was made
18 by and the relationship that was made between Mitchell,
19 Fitzpatrick and Sidney Cominsky.

20 Q. So it's your testimony that Sidney Cominsky
21 participated in this discussion before the grand jury
22 testimony in 1992?

23 MR. KORENBAUM: Objection to the form of
24 the question. I believe, Mr. Julian, he may
25 have confused your question, but --

1 MR. JULIAN: I do that a lot, but let me
2 try it again.

3 Q. Are you saying that Sidney Cominsky,
4 Dr. Mitchell and district attorney Fitzpatrick made this
5 deal, cut this deal before Mitchell testified to the
6 grand jury in November of 1992?

7 MR. KORENBAUM: Objection to the form of
8 the question.

9 A. I don't know.

10 Q. So paragraph 74 -- you have Exhibit KK in front
11 of you. Can you direct me, please, to the testimony in
12 Exhibit KK that you are referencing when the complaint
13 states, "Mitchell presented fabricated and false
14 testimony and suppressed and concealed the truth in an
15 effort to secure Hector Rivas' prosecution indictment and
16 conviction at all costs," can you direct me to that part
17 of the Exhibit?

18 A. "Question: Tell the grand jury what your
19 duties are as medical examiner. Answer: I'm responsible
20 for the investigation of those deaths within my
21 jurisdiction where there's a belief that a non-natural
22 event may have played a role or where there is no
23 physician available in good conscience who can sign the
24 death certificate." Dr. Mitchell has control, he's the
25 one who does the autopsy, he's the one who determines the

1 time of death.

2 Q. So my question is what part of this testimony
3 to the grand jury is fabricated and false, can you direct
4 me to those questions and answers that are fabricated and
5 false?

6 MR. KORENBAUM: Objection to the form of
7 the question. Mr. Manes can answer.

8 A. Well, I really can't answer it, but you know,
9 they say a district attorney can indict a corned beef
10 sandwich.

11 Q. I actually think it was ham sandwich, and it
12 was --

13 A. Oh, a ham sandwich.

14 Q. -- Judge Wachtler who said that, but that's
15 really -- my question to you is can you direct me to
16 those parts of the Exhibit KK that are fabricated and
17 false testimony, please?

18 MR. KORENBAUM: Sidney, do you understand
19 the question?

20 A. I understand the question, but it says clearly
21 that she had gone into rigor, that she had gone into
22 livor. It was starting -- there was fecal -- yeah, I
23 think there's enough information here for the district
24 attorney to have created a scene for the grand jury,
25 that's how they do it, to indict Mr. Rivas and not

1 necessarily tell us when the death occurred, just that it
2 did.

3 Q. Well, what I -- I'm trying to understand the
4 factual basis for the allegation that Mitchell presented
5 fabricated and false testimony to the grand jury, can you
6 direct me to any questions and answers that support that
7 allegation?

8 A. The testimony of Dr. Mitchell.

9 Q. What part of it?

10 A. There's enough information there for a district
11 attorney to use to convince the grand jury to indict.

12 Q. What answers were fabricated and false?

13 A. I don't know. I have no idea. I was not
14 there. I have no idea. It says it clearly, upon
15 examination at the death.

16 Q. Paragraph 75 says, "Fitzpatrick and Mitchell"
17 deliberate -- and Does 1 through 10 deliberately withheld
18 from the grand jury the fact that Mitchell had previously
19 determined that Hill's homicide had occurred at the
20 absolute earliest in the afternoon of Saturday,
21 March 28th, 1987," do you see that?

22 A. Yes.

23 Q. Can you direct me to any document, written or
24 signed by Dr. Erik Mitchell, that said that Hill's
25 homicide had occurred at the absolute earliest in the

1 afternoon of Saturday, March 28th, 1987?

2 MR. KORENBAUM: Signed by Dr. Mitchell, is
3 that the question?

4 MR. JULIAN: Yes.

5 A. I had no idea what documents were submitted to
6 the medical examiner by Mr. Fitzpatrick.

7 MR. KORENBAUM: That's not the question.
8 That's not the question. The question is --
9 well, repeat the question, Mr. Julian.

10 MR. JULIAN: Go ahead. You're welcome --

11 MR. SONNEBORN: Before you do that, Bob,
12 can we take about a three-minute break for me?

13 MR. JULIAN: Yeah, sure. Absolutely.
14 Whatever you need.

15 VIDEOGRAPHER: We're off the record at
16 2:23 p.m.

17 (Whereupon, a recess was taken)

18 VIDEOGRAPHER: We're back on record at
19 approximately 2:30 p.m. Please proceed.

20 MR. KORENBAUM: I just informed -- this is
21 Scott Korenbaum. I just informed Mr. Julian
22 that -- no one who's not in this conference
23 room has the benefit of seeing what we're
24 seeing, which is that Mr. Manes is exhausted
25 and given his advanced age, we believe it

1 prudent for everybody involved to end the
2 deposition now. I suggested to Mr. Julian, and
3 I think he was most gracious enough to agree
4 that moving forward, we should continue -- when
5 we continue Mr. Manes' deposition, it should be
6 in two-hour bites starting in the morning. I
7 just think that's wisest for everybody
8 involved, and in particular from a selfish
9 perspective, Mr. Manes himself.

10 MR. JULIAN: I agree. No problem.
11 Whatever -- whatever it takes to complete the
12 deposition and accord Mr. Manes the appropriate
13 courtesies.

14 MR. VENTRONE: I agree to that. Mark
15 Ventrone.

16 MR. JULIAN: Do we want to try to
17 reschedule it now or do you want to --

18 MR. VENTRONE: I might need a little time.
19 I'm between here and a private practice, so I
20 probably need to go, Bob, back to my office.

21 MR. JULIAN: Okay.

22 MR. VENTRONE: And I'll be able to see my
23 schedule over the next week or so.

24 MR. KORENBAUM: May I suggest that,
25 Mr. Ventrone, you provide either all of us at

1 the same time or you provide Bob with your
2 availability and then we can work around that.

3 MR. JULIAN: Yes. I have a -- I don't how
4 soon you plan on doing it. I do start a jury
5 trial two weeks from today that will go a
6 theoretical two weeks, so --

7 VIDEOGRAPHER: I was going to say,
8 counsel, may we go off the record, please?

9 MR. JULIAN: Yeah, off the record.

10 VIDEOGRAPHER: After hearing approval,
11 this concludes the testimony of Mr. Manes.
12 We're off the record May 31st, 2020 at
13 approximately 2:32 p.m.

14 (Whereupon, the examination concluded)

15 -oOo-

CERTIFICATE OF WITNESS

I, SIDNEY MANES, hereby certify that I have read the foregoing transcript of my deposition taken on May 31, 2022, at approximately 10:30 a.m., in New York State pursuant to the applicable Rules of Civil Procedure and that the foregoing 73 pages of the transcript are in conformity with my testimony given by me, under oath, and at the time and place indicated herein, (with the exception of any corrections made by me on the errata sheet).

SIDNEY MANES

SUBSCRIBED AND SWORN to before me, the undersigned authority on this the _____ day of _____, 2022.

NOTARY PUBLIC

My commission expires _____ day of _____, 20____.

REPORTER'S CERTIFICATE

I, **LISA M. SCHUSTER**, a Shorthand Reporter and
Notary Public in and for the State of New York, DO HEREBY
CERTIFY;

that the foregoing proceedings were taken via
videoconference at the time and place therein set forth,
at which time the witness was put under oath by me;

that the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

that the foregoing is a true and accurate
transcript of my stenographic notes in the above-entitled
matter.

I further certify that I am not a relative or
employee of any attorney or of any of the parties, nor
financially interested in the action.

Dated: June 24, 2022

Lisa M. Schuster